

# STATE OF INDIANA

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## MEMORANDUM

TO: Indiana Association of School Business Officials

FROM: Cheryl A.W. Musgrave, Commissioner *Wm*

DATE: June 25, 2008

SUBJECT: Questions and Answers

1. The purpose of this memorandum is to provide responses by the Department of Local Government Finance ("Department") to several questions posed by members of the Indiana Association of School Business Officials (IASBO) about changes in House Enrolled Act (HEA) 1001-2008 (P.L. 146-2008).

**2. Question:** What is the definition of total gross assessed valuation in reference to determining if a project is controlled? Are Tax Increment Financing (TIF) and deductions included or excluded?

Answer: "Total gross assessed value" is not defined in Title 6 of the Indiana Code. However, IC 6-1.1-1-3 defines "assessed value" or "assessed valuation" as an amount equal to, for assessment dates after February 28, 2001, the true tax value of property. Thus, the Department has determined "total gross assessed value" for purposes of the referendum and remonstrance / petition process in IC 6-1.1-20 means the assessed value of a political subdivision (e.g., school district) before TIF and any deductions, or exemptions are subtracted from the assessed value.

Please note the definition of "gross assessed value" in IC 6-1.1-20.6-1.6 for purposes of the circuit breaker is different than the definition of "total gross assessed value" referred to above. For purposes of the circuit breaker, "gross assessed value" refers to the assessed value of property after the application of all exemptions under IC 6-1.1-10 or any other provision.

**3. Question:** If there is a levy excess in the General Fund in 2008, how is it dealt with in 2009?

Answer: The 2008 levy excess would be known in 2009 (possibly even mid-to late-2009). The Department will allow units the opportunity to prove that a levy excess was caused by delinquencies. If any part of the levy excess was not caused by delinquencies, the remainder of the levy excess will be applied to the transportation levy. This would be a temporary adjustment and would not result in permanent loss to the transportation maximum levy.

**4. Question: Do schools need Department approval for the General Fund and the Pre-School Special Education Fund since these funds do not have tax rates/levies? Will the budget advertising requirements for these funds change?**

Answer: This has yet to be determined. However, the Department approves budgets for Local Road and Street, Motor Vehicle Highway and Cumulative Capital Improvement funds due to the state money that funds the budgets. The Department expects the same decision could be made for School General and PreSchool funds. The Department recommends advertising the budgets in the same manner.

**5. Question: Will the DLGF continue to review and approve projects for which preliminary determination hearing was held prior to June 30 even if the petition to review is filed after July 1?**

Answer: Yes. HEA 1001-2008 (P.L. 146-2008), Section 509 amended IC 20-46-7-8, effective on July 1, 2008. However, even as amended, the statute keeps the current procedure in place requiring the school corporation to file a petition requesting approval from the Department to: (1) incur bond indebtedness; (2) enter into a lease rental agreement; or (3) repay from the debt service fund loans made for the purchase of school buses if the school corporation makes a preliminary determination or adopts a resolution / ordinance (if applicable) **on or before June 30, 2008.**

**6. Question: What is the implementation schedule for fiscal year budgeting? Will there be a 6-month budget or an 18-month budget for the transition from calendar year to fiscal year? Will the fiscal year budget procedure begin on July 1, 2010?**

Answer: There is a meeting on July 16, 2008 with a number of school officials, IASBO, and Department officials to discuss and arrive at a transition plan. The information will be released as soon as possible, as well as revised forms.

**7. Question: Can shortfall appeal levies in the General Fund still be levied in 2010?**

Answer: HEA 1001-2008 (P.L. 144-2008), Section 862 expires on January 1, 2010. However, if the budget process extends into calendar year 2010 due to late submission of Assessed Values, shortfall appeals for budget year 2009 may be accepted providing the unit advertised the shortfall appeal in calendar year 2008 for budget year 2009.

**8. Question: How will cross county school corporations deal with the circuit breaker caps?**

Answer: Circuit Breaker will be dealt with on a county by county basis.

**9. Question: When will the 2009 budget forms be updated? Specifically, when will Form 3 be updated?**

Answer: The new and revised forms will be on the Department's website and Department of Education's (DOE) website on or before Friday, June 27, 2008.

**10. Question: Will the Department approve additional appropriations before 2008 tax rates are certified?**

Answer: No. We are releasing them county by county as budget orders are certified.

**11. Question: When will the target tax rate for the basic grant formula be finalized for 2008?**

Answer: The Department finalized the target tax rate to the DOE on March 31, 2008.

**12. Question: Will the Department determine when units of government in a county hit the circuit breaker cap? What is the timing of reducing funds if the circuit breaker cap is reached?**

Answer: Local officials bill and collect property tax dollars. The circuit breaker is determined by the County Auditor during that process. In accordance with HEA 1001-2008, Section 227, which added IC 6-1.1-20.6-11, the county auditor of each county must certify to the Department:

(1) the total amount of Circuit Breaker credits that are allowed in the county for the calendar year; and

(2) the amount that each taxing unit's distribution of property taxes will be reduced as a result of the granting of the credits.

**13. Question: Is there any thought to how political subdivisions or even taxpayers will be able to calculate circuit breaker shortfalls as debt is added or paid off?**

Answer: There is no standardized method to calculate circuit breaker shortfalls. The parcel information is available at the local level for those who desire to calculate the shortfalls.

**14. Question: Will the State make individual parcel information available to all?**

Answer: Information on assessed values of specific parcels is currently available using the "Assessed Value" database search on the DLGF Web site at [www.in.gov/dlgf/4931.htm](http://www.in.gov/dlgf/4931.htm). This database also offers the public the opportunity to search sales disclosure and historical tax bill information on specific parcels. Please note that this information is available on the DLGF Web site as it is submitted to the state by county officials. Information on specific parcels is always available through the county assessor's and auditor's office. Additionally, for those without Web access, information is available by submitting a public information request.

**15. Question: In two separate meetings, Department personnel has stated that the General Fund levy will be eliminated on June 1, 2009. Isn't the correct date January 1, 2009?**

Answer: Yes, the General Fund levy will be eliminated on January 1, 2009. In fact, with regards to the school general fund levies in IC 20-45, HEA 1001-2008, Section 807, which is **effective on January 1, 2009, repeals the following sections:** IC 20-45-1-3 [definition of "adjusted target property tax rate"]; IC 20-45-1-4 [definition of "adjusted tuition support levy"]; IC 20-45-

1-7 [definition of “emergency relief”]; IC 20-45-1-8 [definition of “equalization tax rate”]; IC 20-45-1-9 [definition of “equalization tax rate limit”]; IC 20-45-1-10 [definition of “equalized levy”]; IC 20-45-1-11 [definition of “excessive tax levy”]; IC 20-45-1-13 [definition of “foundation amount revenue”]; IC 20-45-1-15 [definition of “maximum permissible tuition support levy”]; IC 20-45-1-16 [definition of “new facility adjustment”]; IC 20-45-1-17 [definition of “previous year property tax rate”]; IC 20-45-1-18 [definition of “target property tax rate”]; IC 20-45-1-20 [definition of “tax rate floor”]; IC 20-45-1-21 [definition of “total assessed value”]; IC 20-45-1-22 [definition of “tuition support levy”]; **IC 20-45-2 [school general fund property tax levy general provisions]; and IC 20-45-3 [school tuition support levy for school general fund provisions].**

HEA 1001-2008, Section 810, **repealed other school general fund levy sections, effective on January 1, 2009:** IC 20-45-1-7 [definition of “emergency relief”]; IC 20-45-4 [review by TAB or county auditor of excess levy appeals; school may appeal to Department emergency relief]; **IC 20-45-5 [new facility appeals, control board recommendation]; IC 20-45-6 [emergency relief appeals; “controlled schools”; excess levy for shortfall appeals].**

**16. Question:** The only way new property taxes are outside of the circuit breaker caps is when there is a successful referendum. Is this correct?

Answer: Yes. In accordance with IC 6-1.1-20.6-7(d), beginning with property taxes first due and payable in 2009, property taxes imposed after being approved by the voters in a referendum or local public question are not considered for purposes of calculating a person’s Circuit Breaker credit. For Lake and St. Joseph counties, property taxes imposed to pay debt service or make lease payments for bonds or leases issued or entered into before July 1, 2008 are not considered for purposes of calculating a person’s Circuit Breaker credit (HEA 1001-2008, Section 858 contains the General Assembly’s declaration that Lake County and St. Joseph County are the only eligible counties for this provision).

**17. Question:** If there is a shortfall in Debt Service Fund property taxes, what funds can be used to assure that debt is paid?

Answer: Except as otherwise provided by law, all expenditures for debt service must be paid from the debt service fund. *See* IC 20-40-9-5. There are a few tools a school corporation may use from HEA 1001-2008. First, Section 456 added IC 20-20-36 to the Indiana Code, **effective on January 1, 2009, a “Levy Replacement Grant.”** A school corporation is eligible for such a grant only if for a particular year the school corporation’s total property tax revenue is expected to be reduced by more than two percent (2%) because of the application of circuit breaker credits. **IC 20-20-36-10 requires an eligible school corporation to deposit and use the grant money for its debt service fund in an amount equal to the revenue lost as a result of the granting of the circuit breaker credits.** Any remaining grant dollars after making the deposit into the debt service fund may be deposited in any combination of the eligible school corporation’s capital projects fund, transportation fund, school bus replacement fund, and racial balance fund, as determined by the school corporation. This program is administered by the DOE.

Second, Section 478 added IC 20-40-8-21 to the Indiana Code, **effective on January 1, 2009**. This new provision permits money in the **capital projects fund (CPF)** to be transferred to another fund to replace property tax revenues lost to the fund as a result of the granting of circuit breaker credits. A school corporation is required to make a transfer of money if the fund experiencing a shortfall is a debt service fund and money is not transferred from any other fund to cover the shortfall. The amount transferred must be equal to the amount of the shortfall that is not replaced from other funds.

Third, Sections 495-496 amended IC 20-46-1-8, -9, **effective on July 1, 2008**, allowing a school board to adopt a resolution to place a referendum on the ballot for either of the following purposes:

(1) The school board determines that it cannot, in a calendar year, carry out its public educational duty unless it imposes a **referendum tax levy**.

(2) The school board determines that a referendum tax levy should be imposed to replace property tax revenue that the school corporation will not receive because of the application of the circuit breaker credit under IC 6-1.1-20.6.

A **referendum tax levy** may be put into effect only if a majority of the individuals who vote in a referendum approves the school corporation's making a levy for the following calendar year.

Fourth, IC 20-40-2-4 states that, except as provided by law, any lawful school expenses payable from any other fund of a school corporation, including **debt service** and capital outlay, but excluding costs attributable to transportation (as defined in IC 20-40-6-1), may be budgeted in and paid from the school's general fund.

Lastly, it may be possible to use the rainy day fund for payment of debt service. Discuss this with the State Board of Accounts (SBoA) for more details.

**[Added to memorandum on July 7, 2008]:** HEA 1125 (P.L. 131-2008), Section 5 added IC 6-1.1-21.4 to the Indiana Code, **effective on April 4, 2008**. This new chapter is entitled, "**Rainy Day Fund Loans for Eligible School Corporations**." This new law allows a school corporation located in a county in which distributions of property tax revenue for 2007 or 2008 to the taxing units (e.g., schools) of the county: (1) have not been made; or (2) were delayed by more than sixty (60) days after either due date specified in IC 6-1.1-22-9 (i.e., May 10, 2008 or November 10, 2008). Such "eligible school corporations" may apply to the State Board of Finance ("Board") for a loan from the counter-cyclical revenue and stabilization fund.

The Board, after review by the budget committee, must determine the terms of any loan made; however, the interest rate on the loan may not exceed one percent (1%). The total amount of all loans for all calendar years may not exceed six million dollars (\$6,000,000). An eligible school corporation receiving a Rainy Day Fund Loan must repay the loan within seventy-two (72) months after the date on which the loan is made. An eligible school corporation may repay the loan from any sources of revenue. The obligation to repay the loan is not a basis for an eligible

school corporation to obtain an excessive tax levy under IC 6-1.1-19.

Whenever the Board receives a payment on a Rainy Day Fund Loan, the Board is required to deposit the amount paid in the counter-cyclical revenue and economic stabilization fund. The proceeds of the loan are not considered to be part of the property tax levy collected by the eligible school corporation for taxes first due and payable during a particular calendar year for the purpose of calculating levy excess.

**18. Question: How will the Distressed Unit Board work? What will it be looking for as far as a plan? Will other overlapping governmental entities have to adopt a resolution to approve the plan (Section 207 of HEA 1001-2008)? Does the Board plan to provide any guidance or information to entities who are considering appealing to the Distressed Unit Board? Can entities appear in 2008 for a problem in 2010?**

Answer: The guidelines for the Distressed Unit Appeal Board (formerly known as the “circuit breaker” board) have yet to be set. A memorandum will be issued when a plan is in place within the coming weeks.

HEA 1001-2008, Section 202 provides the definition of “distressed political subdivision,” which could include a school district. It is a political subdivision that expects to its property tax collections reduced by at least five percent (5%) in a calendar year as a result of the application of the circuit breaker credit for that calendar year. The Distressed Unit Appeal Board consists of the director of the office of management and budget (OMB), or his/her designee. The OMB director is the chairperson of the board. The Commissioner of the Department of Local Government Finance will also be a member along with the Commissioner of the Department of Revenue, the state examiner of the State Board of Accounts. There will also be one member appointed by the Governor from nominees for each of the following organizations: the Indiana Association of Cities and Towns, Association of Indiana Counties, and the Indiana Association of School Superintendents. A member nominated and appointed must be an elected official of a political subdivision, like a school district, city/town, or county. There will also be a member appointed by the Governor in addition to the three appointed above. Lastly, there is one (1) member appointed by the speaker of the House of Representatives. This member serves a term of four (4) years.

**19. Question: Since I have an appointed School Board will I be required to go before my Fiscal Body for debt?**

Answer: Yes. HEA 1001-2008, Section 164 added a *new section* to the Indiana Code, IC 6-1.1-17-20.5, **effective on July 1, 2008**. This section applies to an appointed governing body of a “taxing unit” (e.g., appointed school boards, library boards, etc...). IC 6-1.1-1-21 defines “taxing unit” as an entity which has the power to impose ad valorem property taxes. As such, school districts are a “taxing unit.” School districts are not specifically excluded from this section of the Indiana Code like they are in IC 6-1.1-17-20, or implicitly excluded as in IC 6-1.1-17-3.5 with the use of the term “civil taxing unit.” Thus, this section applies to school districts with appointed boards.

As a result, if the assessed valuation of a school district with an appointed governing body is entirely contained within a city or town; *or* if the taxing unit was originally established by the city or town, the appointed school board may not issue bonds or enter into a lease payable in whole or in part from property taxes unless it obtains the approval of the city or town fiscal body. For those appointed school boards that do not have an assessed value entirely within a city or town, or were not originally established by a city or town, such appointed school boards may not issue bonds or enter into a lease payable in whole or in part from property taxes unless it obtains the approval of the county fiscal body in the county where the taxing unit has the most net assessed valuation.

**20. Question: Am I going to lose excise, FIT and CVET because the state is taking over my General Fund levy?**

Answer: No. The Financial Institution Tax (FIT) and Commercial Vehicle Excise Tax (CVET) funds and license excise will be included in the Basic Grant amount. The State will be using a portion of the license excise, FIT, and CVET to assist in funding each school corporation's General Fund budget. In other words, the Basic Grant amount will increase by the license excise, FIT and CVET funds, and will no longer be listed separate from the Basic Grant.

**21. Question: If I have been planning to purchase buses on my ten (10) year plan, do I have to wait for two (2) years to make my next purchase?**

Answer: No. School districts may purchase the buses planned for 2008 under a current ten (10) year plan. However, the current plan should be revised for 2009 and forward for the twelve (12) year replacement cycle.

**22. Question: Who pays for the referendum?**

Answer: HEA 1001-2008, Section 194 added IC 6-1.1-20-3.6 to the Indiana Code, **effective on July 1, 2008**. This new statute says that in a year when a general election or municipal election is held, the public question may be placed on the ballot at a special election only if the fiscal body of the political subdivision [e.g., school district] that requests the special election agrees to pay the costs of holding the special election. In a year where there is *no* general election and *no* municipal election, the fiscal body of the political subdivision that requests the special election is not required to pay the costs of holding the special election; thus, the costs of holding the special election is paid through the usual local government election expenses procedures. IC 3-5-3-11.

If you have any questions about this memorandum, please contact the Budget division at (317) 232-3773.